Beebe, 123 Iowa 620; *Belser v. Moore,* 73 Ark. 296. But it is held that the use of a way for the statutory period, unexplained, raises the presumption that it is used under a claim or assertion of right, and not by permission, and casts upon the owner of the soil the burden of showing that it is merely permissive. *Hammon v. Zehner,* 23 Barb. 473; *Clement v. Battee,* 65 N. J. L. 674. *Pavey v. Vance,* 56 Ohio St. 162. Some courts have held that the use of land, whenever one sees fit and without asking leave, is an adverse use. However, the use of a way without objection or hindrance is not inconsistent with its use by permission. It must appear that the use was enjoyed under such circumstances as to indicate that it was claimed as a right and not regarded by the parties as a mere privilege revocable at the pleasure of the owner of the soil. *C. B. & Q. R. R. Co. v. Ives,* 202 Ill. 71; *Conyers v. Scott,* 94 Ky. 123.

FALSE IMPRISONMENT—ARREST ON CRIMINAL CHARGE—DAMAGES—ELEMENTS OF COMPENSATION.—CLARK V. TILTON, 68 ATL. 335 (N. H.).—*Held,* that the measure of damages would be the amount which would compensate plaintiff for the injury he had sustained because of the arrest, and not such damages as resulted to him by the suppression of the criminal prosecution.

It seems that the courts have been far from uniform in allowing the expenses incurred in the prosecution of cases of torts to be recovered as damages. *Bank v. Williams,* 62 Kan. 431; *Wilson v. Town of Granby,* 47 Conn. 59. In general, the principle which seems to guide the courts in this regard is the distinction drawn as to the malice or negligence of the act complained of. *Clark v. Wolfe,* 115 Ga. 320; *Eatman v. Railroad Co.,* 35 La. Ann. 1018. In actions for false imprisonment, however, the courts have allowed counsel's fee and costs necessarily incurred because of the false imprisonment to be considered with other expenses in the jury's estimate of damages, even though no bad faith or litigious conduct on the part of the plaintiff appears. *Stewart v. Kimball,* 43 Mich. 443; *Parsons v. Harper,* 16 Gratt. 64. And as a general rule it is held that the measure of damages in these cases is the actual expense incurred. *Duggan v. B. & O. R. R.,* 159 Pa. St. 248; *Woodfolk v. Sweeper,* 2 Humphr. 88.

GARNISHMENT—SUMMONS—WHEN ISSUED.—WEBSTER MFG. CO. V. PENROD, 114 N. W. 257 (MINN.).—*Held,* that a garnishee summons is issued when delivered by the plaintiff or his attorney to the proper officer for service upon the garnishee, and when the writ is sent to the officer by mail, delivery is not completed until received by him.

In those states in which the issuing of the writ is the commencement of the action, "issuing" is generally construed to mean the delivery of the writ to the sheriff with the intent to have it served. *Wilkins v. Worthen,* 62 Ark. 401. And a writ is said to be "delivered" within the meaning of this rule when it is placed in the hands of the proper officer or deposited in a place designated or provided by the officer for that purpose, or put in the course of delivery. *Mich. Ins. Bank v. Eldred,* 130 U. S. 693; *Webster v. Sharpe,* 116 N. C. 466. So, as it is held in some states that when a letter is placed in the post-office it passes out of control of the sender and into that of the person to whom it is addressed, *Taylor v. Merchants Life Ins. Co.,* 9 How. 390, by analogy, the writ is deemed by some courts to be delivered to the officer when it is mailed, addressed to him. *Burdich v. Green,* 18 Johns. 14.

However, the delivery of the writ will not constitute the commencement of the action unless there is a *bona fide* intention at the time of delivery of having it served. *Burnell v. Babbitt,* 65 N. H. 168; *West v. Engle,* 101 Ala. 509.

INTOXICATING LIQUORS—SALES WITHOUT LICENSE—EVIDENCE.—STATE v. BROWN, 102 S. W. 394 (ARK.).—On trial for selling liquor without a license, a witness testified that he asked the accused to sell him some whiskey; that the accused replied that he could not sell, but that he would loan him some; that the accused let the witness have two bottles of whiskey; that nothing was said as to when the same was to be returned or paid for; that about an hour and a half later, the witness returned and asked the accused what it cost to get whiskey there, and gave the accused that sum, and told him that when he made an order for whiskey, to get the witness some, and keep that in place of what he had got. *Held,* a sale as a matter of law. Battle, J., *dissenting.*

A sale implies a transfer of property for money. And, as a general rule, when a statute refers in terms to contracts of sale, it has no application to contracts of exchange. *Massey v. State,* 74 Ind. 368. And, while under the code of some states a "loan" would be as between the parties a "sale" as distinguished from a mere bailment, it would not be a sale within the meaning of a statute prohibiting the sale of intoxicating liquor without license, which, because of its being penal in its nature, must be strictly construed. *Skinner v. State,* 97 Ga. 690. These courts, however, will not countenance an attempted evasion of a statute, and it is generally for the jury to determine whether there was a sale or a *bona fide* exchange. *Robinson v. State,* 59 Ark. 341; *Coker v. State,* 91 Ala. 92. But there are many courts that hold that the intention of the legislature to inhibit the sale of liquor, in the broadest sense of that term, includes barter and exchange. *Keaton v. State,* 36 Tex. Cr. 259; *Sparks v. State,* 99 S. W. 546. It is said that practically there is no difference between the terms. And to make such a refinement the turning-point of the interpretation of a statute, contrary to the plain intent of the legislature, would be a violation of all sound rules of construction. *Howard v. Hanis,* 8 Allen 297. It has been held that a loan is a sale and this was without any limitation. *Tombeaugh v. State,* 98 S. W. 1054 (Tex.); *Keaton v. State,* 36 Tex. Cr. 259.

JUDGMENTS—VACATING—MERITORIOUS DEFENSE.—BRANDT v. LITTLE, 91 PAC. 765 (WASH.).—*Held,* that where an independent action is brought to vacate a judgment as obtained without jurisdiction, a showing that the defendant has, or at the time of judgment had a defense, is none the less necessary because the judgment may have been so obtained, especially if the lack of jurisdiction does not appear on the face of the record.

It seems to be the general rule in this country that a Court of Equity will not set aside a judgment, void for want of jurisdiction of the court rendering it, unless the party asking it has, or presents, a meritorious defense. *Meyer v. Wilson,* 166 Ind. 651; *White v. Crow,* 110 U. S. 183. However, it has been held in a number of states that a judgment rendered against a person who has not been served with process and by a court which has no jurisdiction over the parties is absolutely void, and that it is not incumbent upon the plaintiff, seeking to restrain its enforcement, to allege and prove a valid defense to the cause of action. *Mosher v. McDonald & Co.,* 128 Iowa 70;